THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 18367 of 1996

DATED: 22-08-2007

Between:

Nagaraju and others

…Petitioners

and

The District Collector,
Medak at Sangareddy and others

…Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.No. 18367 of 1996

Oral order:

Heard the learned counsel for the petitioners and the learned Government Pleader for Land Acquisition.

In 1978 the 32 petitioners were assigned agricultural land in an extent of Ac.2-00 each in Sy.Nos.287 and 288 in Zaheerabad Village and Mandal of Medak District, under Section 14 of the Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. Pursuant to a requisition by a company (Allwyn Nissan Ltd) for assignment after acquisition of Ac.150-00 of land for its corporate purpose, the State initiated proceedings for acquisition of land under the provisions of the Land Acquisition Act, 1894 (for short 'the Act') land in Sy.Nos. 276 to 286, 299 and 300 including the petitioners' lands in Sy.Nos. 287 and 288 were proposed for acquisition. In these survey numbers, there were patta lands as well as Government land assigned to the petitioners and others similarly situated. Acquisition proceedings under the provisions of the Act were initiated. However, the State served notices calling upon the petitioners and other assignees to show cause why the land assigned to them should not be resumed, as the same is required for a public purpose i.e., for establishing a Light Commercial Vehicle Factory at Zaheerabad. The petitioners represented for payment of market value. Possession of the lands were however taken over by the State in the year 1983 itself without payment of any compensation.

The petitioners thereupon instituted W.P.No.5227 of 1987. The

said writ petition was allowed on 24-3-1989 with a direction to the State to pay the market value of the land to them. The State preferred W.A.No. 72 of 1990. A Division Bench of this Court by the judgment dated 13-12-1995 disposed of the writ appeal. To the extent relevant and material for the purpose of this writ petition, the order in W.A.No.72 of 1990 reads as under:

> *"The appellant tried to attack the order of the learned single Judge on several grounds, whereas the Learned Counsel for the Writ Petitioners tried to support the order of the Learned Single Judge. However, both sides, after going through the relevant G.Os. and the position of the assignees, thought it fit to agree with the subsequent G.O.Ms.No.1307, Revenue (Assignment-I) Department, dated 23-12-1983, which replaces the earlier G.O.Ms.No.18-, Revenue (B) Department, dated 9-2-1984. As per the said G.O., the persons, whose lands were assigned and resumed later, are entitled for compensation in the following manner:*
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> *"The Government after careful examination of the matter in consultation with the Commissioner of Land Revenue, Irrigation and Command Area Development Department and Finance Department hereby order payment of lumpsum ex-gratia equivalent to the market value, to the assignees whose lands are resumed for the Projects and other public purposes and equivalent to valuation for other private orchards and structures, wells, etc/. removing the distinction stipulated in para (3) of G.O.Ms.No.428, Revenue (Assn.I) Department, dated 25-4-1992 subject to the following conditions:-*
>
> *a) that the amount is to be treated as Ex-gratia*
> *b) that the assignees would not be entitled for making reference under Section 18 and Section 28-A of Land Acquisition Act to the Courts;*
> *c) an amount equivalent to 15% for the lands resumed prior to 30-4-1982 and 30% after that date, on the market value payable under Section 23(2) of Land Acquisition Act may be considered for being included in the total ex-gratia payable to the assignees as solatium;*
> *d) that the assignees will not be entitled for interest or*

additional market value under the Land Acquisition Act;

e) *that the above conditions shall be made applicable to all the assigned lands resumed on or after 9-2-1984 (i.e., the date of issue of G.O.Mas.No.180, Revenue, dated 9-2-1984 in suppression of G.O.Ms.No.43, Revenue (B) Department, dated 23-1-1988"*

The learned counsel for the respondents expressed that interest of both the parties will be served if there is a direction to comply with the abovesaid G.O.Ms.No.1307, Revenue (Assignment-I) Department, dated 23-12-1993.

In view of the submissions made without considering the applicability of the principle of approbate and reprobate, as the assignees took compensation and filed Writ Petition; not adverting to the correctness or otherwise in filing the Writ Petition after four years and also not observing whether the compensation should have been determined under the Land Acquisition Act as claimed by the Writ Petitioners, this Writ Appeal is disposed of with a direction to the State to pay the compensation in terms of the G.O.Ms.No.1307, Revenue (Assignment-I) Department, dated 23-12-1993, to the Writ Petitioners i.e., respondents 4 to 34 herein, both in respect of land and structures, etc., within three months from the date of receipt of a copy of this order. No order as to costs."

The relevant provisions of G.O.Ms.no.1307, Revenue (Assignment-I) Department, dated 23-12-1993 have already been extracted in the judgment in the writ appeal and hereinabove. The State does not contest its obligation to pay ex-gratia in terms of G.O.Ms.No.1307. On a true and fair construction of the provisions of G.O.Ms.No.1307, it is apparent that assignees of the lands, which are resumed are entitled for compensation by way of a lumpsum ex-gratia equivalent to the market value of the lands resumed and an amount equivalent to 30% on the market value payable under Section 23 (2) of

the Act towards solatium. This is so, since the resumption of the land from the petitioners was in the year 1983 and para 6 (c) of G.O.Ms.No.1307 assumes an obligation that 30% on the market value be included in the ex-gratia payable towards solatium.

According to the petitioners, after the judgment in the writ appeal, in December, 1995 they made a representation to the respondents requesting determination of the market value in terms of G.O.Ms.No.1307. It is also pleaded that in respect of acquisition of lands of other land owners in the same survey numbers in which the petitioners' lands are also situate, they were paid compensation under an award passed determining the market value at Rs.8000/- per acre. The land owners then sought a reference under Section 18 of the Act in several O.Ps. including O.P.Nos. 530 of 1985 and batch. The Court of the Additional District Judge, Medak by the award dated 30-6-1989 enhanced the market value from Rs.8000/- (determined by the Land Acquisition Officer) to Rs.20,000/- per acre and in another O.P.No. 754 of 1987 by the order dated 22-11-194 determined the market value at Rs.20,500/- per acre. Admittedly, no appeals were preferred by the State and the several orders of the reference court re-determining the market value has attained finality.

Petitioners' specifically claim that their lands which were resumed were identical to the lands of other patadars in respect of which, the Civil Court had re-determined the market value at Rs.20,000/- per acre. There is no demurral to this specific plea in the counter-affidavit filed in this writ petition. The petitioners claim payment of lumpsum ex-gratia together with solatium on the basis that the market value of these lands was Rs.20,000/- per acre on the relevant date and as determined by the reference court in respect of similar lands belonging to pattadars and in the same survey numbers, in Zaheerabad.

The 2nd respondent has filed a counter-affidavit. To the extent relevant and material, the relevant facts are admitted namely that

Rs.8000/- per acre was the market value determined by the Land Acquisition Officer in respect of patta lands and that value should comprise the lumpsum ex-gratia per acre payable to the petitioners. On the principle of non-traverse, the petitioners assertion that their lands are identical to other private lands must be inferred to have been admitted by the State. What is contended on behalf of the respondents is that the petitioners who are mere assignees are not entitled either in terms of G.O.Ms.No.1307 or in terms of the judgment in W.A.No.72 of 1990 to claim the remedy of reference under Section 18 of the Act or re-determination of compensation under Section 28-A of the Act. They should be satisfied with whatever market value that has been determined towards lumpsum ex-gratia to them by the Land Acquisition Officer.

The contention urged on behalf of the State to deny relief to the petitioners does not command acceptance of this Court. The petitioners may not technically be entitled to claim reference to the Civil Court under Section 18 of the Act or for re-determination of the compensation under Section 28-A of the Act on the basis of Civil Court's determination of the value of comparable lands. Normatively the role of the Civil Court while considering the reference under Section 18 of the Act is a judicial re-determination of the true market value on the basis of a judicious evaluation of all relevant material placed before it as evidence oral or documentary. This re-determination role though the statutory present under Section 18 of the Act is nonetheless a rational re-determination of the market value by the judicial authority. In view of the admitted parity of the land of the petitioners with the lands of private land owners and in the same survey numbers in Zaheerabad, the Civil Court's re-determination of the market value for identically circumstanced lands is a formal declaration by a judicial authority as to the correct market value duly correcting the erroneous determination of the market value by a revenue authority.

As G.O.Ms.No.1307 mandates the payment of market value as lumpsum ex-gratia, the State cannot gainfully contend that the market value is whatever is determined by a revenue authority under Section 12 of the Act. Such determination by the revenue authority (the Land Acquisition Officer) has been processed by the reference court in respect of identically circumstanced lands. A judicial authority has found and concluded that the Land Acquisition Officer was in error in determining the market value at Rs.8000/- per acre and re-determined the market value at Rs.20,000/- per acre. This is an admitted position. In the light of the policy decision of the State contained in G.O.Ms.No.1307 that the assignees whose lands are resumed for Projects should receive lumpsum ex-gratia in terms of the market value it must rationally follow that they are entitled to the true market value as lumpsum ex-gratia and determined by a rational process.

The learned counsel for the petitioners would further contend that a Larger Bench of this Court in ***LAO-cum-Revenue Divisional Officer, Chevella Division v. Mekala Pandu***[1], held that the assignees of the Government lands are entitled to payment of compensation equivalent to the full market value of the land and other benefits on par with full owners of the land even in cases where the assigned lands are taken possession of by the State in accordance with the terms of the grant or patta and that the prohibition that assignees shall not alienate the land would not operate as a clog on ownership. The Larger Bench of this Court has also held that the condition in such assignments that assignees are not entitled to compensation in case the Government resumes the land for public purpose is an unconstitutional condition and is invalid. It further held that the assignees shall have to be treated as owners of the land and are entitled to compensation based on the market value along with all other consequential benefits in terms of the provisions of the Act. On the basis of this judgment, the petitioners claim all the benefits under the provisions of the Act on par with private owners of land in the same

survey numbers.

Per contra, the learned Government Pleader for the Land Acquisition would contend that the State Government had filed an appeal before the Supreme Court against the judgment of the Larger Bench and the Supreme Court by an order dated 24-1-2005 in Petitions for Special Leave to Appeal (Civil) Nos. 670 to 678 of 2005 had granted interim stay as regards making of further payment of compensation and therefore, it would not be proper to grant the petitioners relief in terms of the judgment in ***Mekala Pandu*** (supra).

Since the ratio evolved in the Larger Bench judgment in ***Mekala Pandu*** (supra) is under appellate consideration by the Supreme Court, this Court is not inclined to grant the petitioners relief on the basis of the said decision.

However, in view of the analysis above, the petitioners are entitled to lump sum ex-gratia on a computation of the market value as determined by the Civil Court in O.P.Nos. 530 of 1985 and batch dated 30-6-1989. It is an admitted position that the Civil Court has re-determined the market value at Rs.20,000/- per acre. Since G.O.Ms.No.1307 directs the payment of lump sum ex-gratia on the basis of the market value and since the assigned lands of the petitioners which were resumed are identically circumstanced as other private lands in respect of which the market value was re-determined at Rs.20,000/- per acre in O.P.Nos. 530 of 1985, the market value shall have to be paid to the petitioners at Rs.20,000/- per acre and the ex-gratia payable to them shall have to be re-determined on that basis including the 30% solatium as mandated in clause (c) of G.O.Ms.No.1307. The petitioners have already been paid ex-gratia on the basis of the market value at Rs.8000/- plus 30% solatium thereon. The respondents shall now re-compute the ex-gratia payable to the petitioners on the premise that the market value is at Rs.20,000/- per acre duly including the component of 30% solatium thereon and shall pay the petitioners the balance amount of ex-gratia, expeditiously and

preferably within a period of six months from the date of receipt of a copy of this order.

The writ petition is accordingly allowed as above. There shall however be no order as to costs.

GODA RAGHURAM, J

22-08-2007
GRR

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[1] 2004 (2) ALD 451 (LB)